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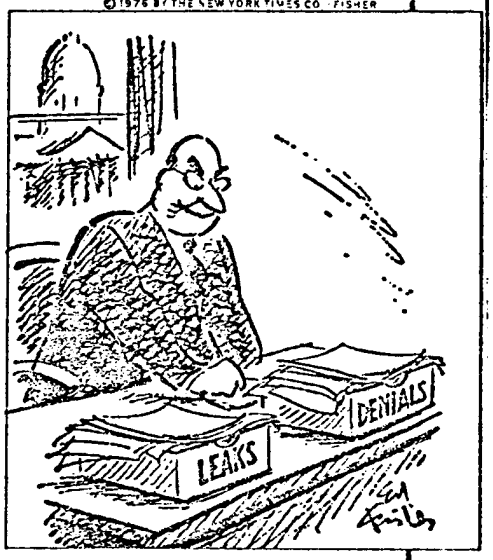
Plumbing the Real World of Leaks

Those who want simple answers about the giving away of Government secrets have had a hard time of it in recent weeks. First, Daniel Schorr of CBS irritated even a lot of fellow journalists by the way he slipped a congressional report on the CIA to New York City's flashy *Village Voice*. Henry Kissinger complained that "highly classified information" had been leaked. Then Kissinger himself was embarrassed by leaks of his own confidential Middle East negotiations and, having denounced the deed, had to reprimand one of his closest aides, who had leaked with Kissinger's approval, but perhaps more than his boss had intended. Such a diplomatic reprimand—obviously written in quick fading ink—carries about as much weight as a diplomatic denial.

New York *Times* Columnist William Safire (a Kissinger colleague in Nixon's day but now an implacable enemy) gloated over Kissinger's discomfiture. But many Washington journalists, whatever their views of Kissinger's policies, gratefully regard him as the ablest private explainer of public policy in Washington. His leaks are easy to spot. A recent story in the *Times* begins: "Henry A. Kissinger has concluded that Cuba is again in the business of 'exporting revolution.' " The story goes on: "But Mr. Kissinger has reportedly decided not to say this in public for now." Kissinger thus "goes public" with what he professes not to want to say publicly. When such is the real world of leaks, much of the official huffing and puffing about the subject is humbug.

But not all. When leaks embarrass, the first official cry is that national security has been compromised. On the record of the past few years, this charge simply will not wash. Too much has been stamped confidential in order to conceal hanky-panky and ineptitude, not secrets. Even the celebrated 47 volumes of the Pentagon papers contained, as a Pentagon official admitted, "only 27 pages that gave us real trouble"—and these came to not much. In Daniel Schorr's case, *Village Voice* readers must have nodded over the congressional committee's tendentious maunderings and its few carefully bowdlerized CIA documents.



Still leaks can damage. The real effect of the Pentagon papers was to reveal the Government's systematic deception of the public. The real damage of the Schorr leak, once the House of Representatives had voted to keep the report secret, was to show congressional inability to keep a secret. The Kissinger leak warned foreign ministers that what they say in confidence may later be leaked by the State Department.

But even if security is not violated, does not the Government have a right to secrecy, and to private discussion? Indeed it does, as well as the responsibility to keep it private. No one can object if an Administration, by discipline and discretion, saves itself from too many unseemly disclosures. In the poisoned atmosphere of Viet Nam and Watergate, men who leaked were denounced as traitors or hailed as heroes, but in most instances were neither. A leak by a man of conscience, upset by wrongdoing and willing to take the consequences, deserves honoring. But most leaks serve the self-interest of those who supply them, or come from secondary bureaucrats appealing over their superiors to public opinion when their side of an internal argument has lost.

Where the public's interest lies in this dispute between Government and press was put best by Alexander Bickel, a Yale law professor. In his posthumous book *The Morality of Consent*, he answered: "It is the contest that serves the interest of society as a whole, which is identified neither with the interest of the Government alone nor of the press." Bickel expected each side to pursue its interest with zeal, but "the weight of the First Amendment is on the reporter's side, because the assumption ... is that secrecy and the control of news are all too inviting, all too easily achieved, and, in general, all too undesirable."

Bickel argued and won the Pentagon papers case, which resulted in the landmark decision on secrets and leaks. The Supreme Court decided, in Bickel's words, that "if a newspaper had got hold of those documents without itself participating in a theft of them, although somebody else might to its knowledge have stolen them, it could have published them with impunity." This makes newspapers sound uncomfortably like criminal fences, though the stolen property is not jewels but information.

Many people are disquieted that editors should have the power to print whatever falls into their hands: who elected *them?* Editors, debating among themselves, usually conclude that they cannot halt what is already public enough for them to know about. Not to publish, when the information adds to the public knowledge, would seem to them even more of an arrogance of power. All in all, it is easier to prove a democracy made sounder by public knowledge than a nation weakened by secrets revealed.